IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.40 OF 2007
IN
WRIT PETITION NO.8392 OF 2006

Pioneer Education Trust ..Applicant.

V/s.

V.N.Kalambikar & Ors. ..Respondents.

Mr.V.A.Kohir for applicant.

Ns.Usha Arora for respondent No.1.

CORAM : A.P.DESHPANDE, J.

DATED : 25TH APRIL, 2007.

P.C. :-

The Writ petition is filed by the School Management taking exception to the Judgment and order dated 31/10/2006 passed by the School Tribunal, Mumbai. Respondent No.1 worked as Head Mistress in a School administered by the petitioner. She was proceeded against in Departmental Enquiry on charges of misconduct and by an order dated 15/9/1993 a punishment in the nature of reduction in rank was imposed and the respondent No.1 was reduced from rank of Head Mistress to the rank of Asstt. Teacher. The said decision was challenged by the respondent No.1 before School Tribunal. The School Tribunal allowing the appeal had set aside the impugned order of reduction in rank and granted reinstatement in the post of Head Mistress with

all benefits. Rule has been granted on 21st December, 2006. The School Management filed the present Civil Application for stay of the order passed by the School Tribunal. As I was not inclined to grant the relief prayed for, the learned counsel appearing for the petitioner has submitted that the petitioner would deposit the entire amount of difference of wages as per the order passed by the School Tribunal in this Court and shall also continue to pay the respondent No.1 in the scale admissible to the post of Head Mistress. An affidavit has already been filed to this effect on 23rd April, 2007 and it is contended that the petitioner has lost confidence in respondent No.1 as charges relate to misappropriation of funds and hence the respondent No.1 be not permitted to work as Head. It is thus submitted that the present petitioner would release all monetary benefits to the respondent No.1 which flow from the impugned order. It is further submitted that the petitioner will secure payment of salary to the respondent in the scale of Head Mistress.

2. The respondent No.1 is to attain the age of superannuation in the month of June, 2008. As the petitioner has shown its readiness and willing to deposit the entire amount of difference of wages in two instalments and has further stated in the affidavit that an additional sum of Rs.1,00,000/- will be

deposited in this Court which would cover the difference of salary till the respondent No.1 attains the age of superannuation in the scale admissible to the Head Mistress and that of the Asstt. Teacher. The position that emerges is that the petitioner would be depositing a sum of Rs.9,87,000/- towards the difference of back wages in two instalments. The first one to be deposited within 2 weeks from today and the next within a period of 4 weeks therefrom and over and in addition to the said sum, an amount of Rs.1,00,000/- has been undertaken to be deposited by the petitioner as referred to hereinabove.

3. At this stage, the learned counsel for the respondent No.1 has pointed out that on account of the pendency of the appeal before the School Tribunal, the respondent-State acting through its authorities has not fixed the pay of the respondent No.1 and it is further submitted that no decision has been taken in regard to grant of the senior scale. In view of the fact that the respondent No.1 is due for retirement in June, 2008, it is urged that the respondent No.2, 3 & 4 in the Writ petition be directed to carry out the pay fixation by taking appropriate decisions in accordance with law, in regard to grant of senior scale. Hence I pass the following order.

i. Civil Application is partly allowed. Though the impugned order is not stayed, it is clarified that the respondent No.1 shall be notionally treated as having been reinstated in the post of Head Mistress. However, respondent No.1 shall continue to work as an Asstt. Teacher pending the decision of this petition. The petitioner shall deposit a sum of Rs.5,00,000/- in this Court within a period of 2 weeks from today and balance Rs.6,00,000/- within a period of 4 weeks therefrom. The amount so deposited is permitted to be withdrawn by the respondent No.1 on furnishing security to the satisfaction of the Registrar (Judicial).

ii. The respondent No.1 shall be notionally treated as Head Mistress for all purposes, including release of retirement benefits / pensionary benefits.

iii. Respondent Nos.2, 3 & 4 shall make the pay fixation of the respondent No.1 having regard to the revision of the pay under fifth pay commission.

iv. Respondent No.1 is permitted to make a representation to the respondent Nos.2 & 3 for claiming senior scale having regard to the order passed by the School Tribunal and the Education Officer shall consider the same and pass an appropriate order in accordance with law.

v. Civil application disposed of.

(A.P.DESHPANDE, J.)